

CITY CLERK
OFFICIAL COPY

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 SEP 30 AM 11:52

08-948

IN THE MATTER OF:
Omaha & Grant Smelter Location
(On-Site Soils Operable Unit 2)
Vasquez Boulevard/Interstate 70 Superfund Site

ADMINISTRATIVE
SETTLEMENT AGREEMENT
AND ORDER ON CONSENT FOR
REMEDIAL INVESTIGATION/
FEASIBILITY STUDY

Denver, Colorado

U.S. EPA Region 8
CERCLA Docket No. CERCLA-08-2008-0011

City and County of Denver, CO,

Proceeding Under Sections 104, 107
and 122 of the Comprehensive
Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. §§ 9604, 9607
and 9622.

Respondent

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT

paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with Interest accrued) to EPA in the manner described in Section XIX. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (with Interest accrued) for which it did not prevail to EPA in the manner described in Section XIX.

93. After resolution of the dispute and final payments are made in accordance with Paragraph 92, Respondent shall be disbursed the balance, if any, of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Past Response Costs and Future Response Costs.

XX. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

94. Creation of VB/I-70 OU2 Disbursement Special Account and Agreement to Disburse Funds to Respondent. Within 30 days after the Effective Date, EPA shall establish a new special account, the VB/I-70 OU2 Disbursement Special Account, within the EPA Hazardous Substance Superfund. Within 30 days of EPA's receipt of the proceeds of the United States' settlement with ASARCO described in Paragraph 88, EPA shall deposit \$330,000 into the VB/I-70 OU2 Disbursement Special Account. Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the VB/I-70 OU2 Disbursement Special Account, including Interest Earned on the funds in the VB/I-70 OU2 Disbursement Special Account, available for disbursement to Respondent as reimbursement for performance of the Work under this Settlement Agreement. EPA shall disburse funds from the VB/I-70 OU2 Disbursement Special Account to Respondent in accordance with the procedures and milestones for phased disbursement set forth in this Section.

95. Timing, Amount and Method of Disbursing Funds From the VB/I-70 OU2 Disbursement Special Account. Within 90 days of EPA's receipt of a Cost Summary and Certification, as defined by Paragraph 96, or if EPA has requested additional information or a revised Cost Summary and Certification under Subparagraph 96 c, within 90 days of receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section, EPA shall disburse the funds from the VB/I-70 OU2 Disbursement Special Account at the completion of the following milestones, and in the amounts set forth below:

a. Milestone Disbursement of Funds

- i) EPA approval of the Remedial Investigation Report - Actual amount of documented costs up to the full amount in the VB/I-70 OU2 Disbursement Special Account.
- ii) EPA approval of the Feasibility Study Report Actual amount of documented costs up to the entire amount remaining in the VB/I-70 OU2 Disbursement Special Account

EPA shall disburse the funds from the VB/I-70 OU2 Disbursement Special Account to Respondent in the following manner:

FEDERAL ACH/WIRE TRANSFER INSTRUCTIONS FOR THE CITY AND COUNTY OF DENVER:

ACH INSTRUCTIONS:

Bank: JP Morgan Chase Bank
1125 17th St., Denver, Colorado 80202
ABA #: 102001017
Account #: 193488945
For credit to: The City and County of Denver Manager of Finance
Further credit to: Department of Environmental Health
Text: Explanation of payment: Reimbursement of Costs Pursuant to Administrative Order on Consent in Re: Vasquez Boulevard Superfund Site OU2

96. Requests for Disbursement of Special Account Funds.

a. Within 60 days of issuance of EPA's written confirmation that a milestone of the Work, as defined in Paragraph 95, has been satisfactorily completed, Respondent shall submit to EPA a Cost Summary and Certification, as defined in Subparagraph 96b, covering the Work performed pursuant to this Settlement Agreement up to the date of completion of that milestone. Respondent shall not include in any submission costs included in a previous Cost Summary and Certification following completion of an earlier milestone of the Work if those costs have been previously reimbursed pursuant to Paragraph 95.

b. Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by Respondent for the Work covered by the particular submission, excluding costs not eligible for disbursement under Paragraph 97. Each Cost Summary and Certification shall contain the following statement signed by the Project Manager for Respondent (or any other designee of the Respondent with knowledge of the Work and costs):

- i) To the best of my knowledge, after thorough investigation and review of Respondent's documentation of costs incurred and paid for Work performed pursuant to this Settlement Agreement [insert, as appropriate, "up to the date